

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 166 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARANBHAI NAGABHAI

Versus

STATE OF GUJARAT

Appearance:

MS KD PARMAR for Petitioner
MR KAMAL MEHTA ADDL.PUBLIC PROSECUTOR
for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 02/04/98

ORAL JUDGEMENT

Rule. Mr. Kamal Mehta, learned APP waives the service of rule for and on behalf of the State. Both submit to hear the matter today.

2. The applicant, who is nephew of convict Vikram Raja, prays for the order directing the Jail authority to

refund the amount of bond, the prisoner had executed as per the order passed by this court, while releasing him on temporary bail.

3. The applicant had preferred Criminal Misc. Application No. 182 of 1997 in Criminal Appeal No. 860 of 1994 for getting his uncle released on temporary bail. This Court (Coram : Mr. N.J.Pandya and Mr.H.L.Gokhale, JJ.) on 4th February, 1997 released him on bail for a period of two weeks from the date of his released, on his furnishing the deposit of Rs.2,000/- before the Jail authority. As per the order of the bail, the uncle of the applicant had to surrender back to the Jail authority on the expiry of the said period. He was then released on bail. He deposited Rs.2,000/- before the Jail authority as per the order passed by this court. On the expiry of the bail period, he surrendered back to the Jail authority and prayed for the refund of the amount of Rs.2,000/-. His request was turned down, and therefore, the present application has been filed.

4. It is the submission on behalf of the opponent that during the period of bail, the petitioner's uncle committed another offence punishable under Sec. 143-147-148-336-504(2) of I.P.Code, and therefore, he committed the breach of the condition of the bail order. Hence the amount of bond was forfeited. This application, in view of the fact, is required to be rejected.

5. Whether the applicant is entitled to refund of the bond amount of Rs.2,000/- is the only question that arised for consideration. Ordinarily, after the prisoner surrenders himself back to the Jail custody, the amount of bond, he has deposited, should be refunded to him, or to his surety as the case may be provided of course, he has esteemed all the conditions and committed neither the breach of any of the conditions of the bail order, nor any wrong. In this case, as submitted, the petitioner committed the breach of the condition of the bail order by committing another offence as mentioned hereinabove. Ordinarily, therefore, the bond amount should be forfeited, and when the same has been done, one may say rightly so done, but what is required to be examined is whether the Jail authority had the power to forfeit the bond amount? The authority passing the order can forfeit the amount. The Jail authority can forfeit the amount of bond, if specifically authorised by the court passing the order. If the Jail authority is not authorised to forfeit the amount, passing necessary order by the court, the Jail authority cannot forfeit the amount. In that

case, the Jail authority has to move the court for appropriate order.

6. In this case, the copy of the order under which the petitioner was released on bail is annexed at Annexure : A. That order, nowhere, authorises the Jail authority to forfeit the amount. When the order passed by the court is silent about powers conferred on the Jail authority, it would not be open to the opponents to forfeit the amount. The proper course opened to the opponent was to initiate any other proper proceeding before the competent court for necessary orders, and establish that the breach is committed. Instead that, assuming the authority, the Jail authority has passed the order forfeiting the amount which is neither in consonance with the bail order nor law. The same is, therefore, required to be quashed.

7. For the aforesaid reason, the application is allowed. The order of forfeiture of the bond amount is hereby quashed. The opponents are directed to refund the amount of Rs.2,000/- deposited with the Jail authority to the petitioner within a period of a week. Rule accordingly made absolute.

(ccs)